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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

FEB 12 2009

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
KEATON DEVELOPMENT COMPANY FOR
APPROVAL OF AN EXTENSION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR THE PROVISION OF WATER
SERVICE IN PORTIONS OF LA PAZ COUNTY,
ARIZONA.

DOCKET NO. W-02169A-08-0301

DECISION NO. 70745**OPINION AND ORDER GRANTING
AN ORDER PRELIMINARY**

DATE OF HEARING:

October 22, 2008 (Pre-Hearing Conference) and October 30, 2008

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey

APPEARANCES:

Mr. Richard L. Sallquist, SALLQUIST, DRUMMOND
& O'CONNOR, P.C., on behalf of Applicant; andMr. Kevin Torrey, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.**BY THE COMMISSION:**

On June 13, 2008, Keaton Development Company ("Keaton" "Company" or "Applicant")
filed with the Arizona Corporation Commission ("Commission") an application for an extension of its
Certificate of Convenience and Necessity ("Certificate" or "CC&N") to provide domestic water
service in portions of La Paz County, Arizona.

On July 3, 2008, Keaton filed an Amended Application.

On August 1, 2008, the Commission's Utilities Division ("Staff") filed an Insufficiency Letter
and First Set of Data Requests.

On August 12, 2008, Applicant filed a Second Amended Application withdrawing the
amendment set forth in the July 3, 2008 filing.

1 On August 19, 2008, Staff filed a Sufficiency Letter indicating that Keaton's application had
2 met the sufficiency requirements as outlined in the Arizona Administrative Code ("A.A.C.").

3 On August 20, 2008, Keaton filed a Response to Staff's First Set of Data Requests.

4 On September 4, 2008, a Procedural Order was issued, setting the evidentiary hearing in this
5 matter to commence on October 30, 2008, and scheduling other procedural deadlines.

6 On September 26, 2008, Keaton filed an Affidavit of Publication and Certification of Mailing,
7 stating that notice of the hearing date had been published on September 17, 2008, in the *Parker*
8 *Pioneer*, a newspaper of general circulation, and notice of the application had been mailed to property
9 owners in the requested extension area on September 8, 2008.

10 On October 3, 2008, Staff filed a Staff Report recommending that the Commission issue an
11 Order Preliminary in this matter.

12 On October 8, 2008, by Procedural Order, a pre-hearing conference was scheduled to
13 commence on October 22, 2008.

14 On October 10, 2008, Keaton filed objections to the Staff Report.

15 On October 22, 2008, the pre-hearing conference was held as scheduled before a duly
16 authorized Administrative Law Judge ("ALJ") of the Commission. Keaton and Staff appeared
17 through counsel and a discussion was held on issues that needed to be addressed during the
18 evidentiary hearing. No members of the public were present.

19 On October 30, 2008, the evidentiary hearing was held as scheduled. Keaton and Staff
20 appeared through counsel and submitted testimony and evidence on the issues. No members of the
21 public were present to give public comment. At the conclusion of the hearing, the parties were
22 directed to file a joint late-filed exhibit related to the testimony and evidence presented during the
23 hearing.

24 On November 26, 2008, Keaton filed its Arizona Department of Water Resources ("ADWR")
25 Compliance Status Report ("CSR") showing ADWR had approved Keaton's System Water Plan.

26 On December 4, 2008, Staff filed a late-filed exhibit on behalf of the parties.

27 After the filing of the joint late-filed exhibit, the matter was taken under advisement, pending
28 submission of a Recommended Opinion and Order to the Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. Keaton is an Arizona public service corporation in good standing with the Commission's Corporation Division.

2. Keaton is authorized to provide water utility service in an area approximately 3 square miles in the vicinity of the Town of Salome, in La Paz County, Arizona.

3. Keaton received its authorization to provide water utility service in Arizona in Commission Decision No. 41705 (November 12, 1971).

4. Keaton currently serves approximately 486 customers. Keaton's customer base includes both residential and commercial customers. (Tr. at 9)

5. On June 13, 2008, Keaton filed an application with the Commission seeking to extend its CC&N to include an additional 89 acres, adjacent to its existing CC&N, which is more fully described in Exhibit A, attached hereto and incorporated herein by reference. Keaton has received a request for service from Phoenix Atlantic Properties, L.L.C., to provide water service to a proposed development known as Sunland Estates, which will consist of 228 residential lots at final build out.¹

6. According to Keaton's application, Keaton proposes to finance on-site facilities needed in the requested extension area through line extension agreements with the developer. (App. at 4)

7. On October 3, 2008, Staff filed a Staff Report recommending that the Commission issue an Order Preliminary prior to extending Keaton's CC&N for the requested area. Staff recommends that the Order Preliminary require Keaton to comply with the following conditions:

- 1) That Keaton file with Docket Control, as a compliance item in this docket, a copy of the Arizona Department of Environmental Quality ("ADEQ") issued Approval to Construct ("ATC") for Sunland Estates, within three years of the effective date of an Order Preliminary in this proceeding.

¹ Keaton's application at Exhibit I and Exhibit J.

- 2) That Keaton file with Docket Control, as a compliance item in this docket, a copy of the ADWR letter stating Keaton's System Water Plan is satisfactory, no later than December 31, 2008.
- 3) That Keaton file with Docket Control, as a compliance item in this docket, a copy of the ADWR Analysis of Adequate Water Supply or Physical Availability Determination, indicating there is an adequate water supply to serve the requested extension area, within three years of the effective date of the issuance of an Order Preliminary in this proceeding.
- 4) That after Keaton complies with Requirement Nos. 1 and 3, Keaton shall make a filing stating so. Within 30 days of such filing, Staff shall file a response. The Commission should schedule this item for a vote to grant Keaton's requested CC&N, as soon as possible, after Staff's filing that confirms Keaton's compliance with Requirement Nos. 1 and 3. If Keaton does not comply with any one of Requirements Nos. 1 and 3, within the timeframe specified, the Order Preliminary shall be null and void, and this docket shall be closed.

8. On October 10, 2008, Keaton filed objections to the Staff Report, stating that Staff's recommendation No. 2 should be modified to allow Keaton three years from the effective date of the recommended Order Preliminary, to file its ADWR approved System Water Plan.

9. Pursuant to A.R.S. §40-282 (D), an Order Preliminary may be issued by the Commission:

If a public service corporation desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not yet been granted to it, the corporation may apply to the commission for an *order preliminary* to the issue of the certificate. The Commission may make an order declaring that it will thereafter, upon application, under rules it prescribes, issue the desired certificate, upon terms and conditions it designates, after the corporation has obtained the contemplated franchise or permit or may make an order issuing a certificate on the condition that the contemplated franchise or permit is obtained and on other terms and conditions it designates. If the

1 commission makes an order preliminary to the issuance of the certificate, upon
2 presentation to the commission of evidence that the franchise or permit has
3 been secured by the corporation, the commission shall issue the certificate.
(emphasis added)

4 10. According to the Staff Report, Staff is recommending the issuance of an Order
5 Preliminary because Keaton has not obtained from ADEQ the ATC for Sunland Estates, ADWR has
6 not given final approval on Keaton's System Water Plan, and ADWR has not determined there is
adequate water to serve the proposed extension area.

7 11. Keaton did not object to Staff's recommendation that the Commission issue an Order
8 Preliminary for the proposed extension area.

9 **Existing and Proposed Water System**

10 12. According to the Staff Report, Keaton's existing water system has two wells producing
11 approximately 314 gallons per minute ("GPM"). The water system also consists of one 20,000 gallon
12 storage tank, two 14,000 gallon storage tanks, and a distribution system serving 502 connections.

13 13. Staff concludes that the existing water system has adequate well production and storage
14 capacity for Keaton's existing connections.

15 14. The proposed development in the extension area will be done in two phases. Keaton's
16 application covers Phase I of the development and will consist of 48 residential lots. Phase II of the
17 development will consist of 30 residential lots. (Tr. at 11)

18 15. Keaton's proposal for new facilities needed to serve the extension area includes
19 replacing the pump at Well No. 2, installing a new storage tank with a 90,000 gallon capacity, and
20 installing transmission lines interconnecting Sunland Estates to Keaton's existing water system.

21 16. Keaton's application states that line extension agreements with the developer will be
22 used to fund the new facilities needed to serve the extension area. Keaton provided a cost analysis for
23 the new facilities needed and estimated the cost to be approximately \$1.3 million.

24 17. Staff reviewed the proposed new facilities needed for the extension area and the
25 estimated cost analysis and found them to be reasonable. However, Staff made no "used and useful"
26 determination regarding the proposed plant in service and no conclusions should be inferred for rate
27 making or rate base purposes.
28

1 18. Keaton's witness testified that sanitation services will be provided through the use of
2 septic tanks in the extension area. (Tr. at 20)

3 19. ADEQ has determined that Keaton's water system is delivering water that meets water
4 quality standards required by the A.A.C., and that Keaton is in compliance with ADEQ requirements.

5 20. Keaton's witness testified that arsenic levels within the proposed extension area are at
6 0.4 parts per billion and are within ADEQ and the Environmental Protection Agency's maximum
7 containment levels of 10 parts per billion.

8 21. Keaton is not located within any ADWR designated Active Management Area
9 ("AMA") and therefore is not subject to AMA reporting and conservation rules.

10 22. At hearing, Keaton admitted evidence that ADWR had reviewed, but not yet approved
11 its System Water Plan. The System Water Plan includes a Water Supply Plan, Drought Preparedness
12 Plan, and Water Conservation Plan. On November 26, 2008, Keaton docketed the ADWR approved
13 System Water Plan for the extension area, and therefore has satisfied Staff's recommendation that the
14 approved System Water Plan be filed by December 31, 2008.

15 23. Keaton has not yet demonstrated that there is an adequate water supply to serve the
16 proposed extension area by filing a copy of the ADWR Analysis of Assured Water Supply ("AAWS")
17 or Physical Availability Determination ("PAD") recommended by Staff. Staff recommends that
18 Keaton file either an AAWS or PAD within three years from the grant of an Order Preliminary.

19 24. Keaton has no outstanding ACC compliance issues.

20 25. The Consumer Services Section of the Commission reports that no complaints,
21 inquiries and opinions were reported for Keaton in the years 2005 and 2007. According to Consumer
22 Services, although there were three complaints filed against Keaton in 2006 related to billing and
23 quality of service issues, all the 2006 complaints have been resolved and closed.

24 26. Keaton will charge its authorized rates on file with the Commission in the proposed
25 extension area.

26 27. Keaton's 2007 balance sheet showed Keaton owes \$16,000 in back taxes to La Paz
27 County for property taxes. At hearing, Keaton's witness testified that in December 2003, Keaton
28 entered into a Chapter 11 reorganization plan, and at that time the Company owed \$30,000 in back

1 property taxes to the County. He further testified that the bankruptcy plan requires Keaton to make six
2 annual payments of the principal amount plus interest of 5 1/2 percent to repay the back taxes.
3 (Tr. at 15)

4 28. The Commission has become concerned with public service corporations paying their
5 property taxes in a timely manner. Because an allowance for property tax expense is included in
6 Keaton's rates and collected from its customers, the Commission seeks assurances from Keaton that
7 any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has
8 come to the Commission's attention that a number of water and wastewater companies have been
9 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
10 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure Keaton
11 shall annually file, as part of its annual report, an affidavit with the Utilities Division attesting that the
12 Company is current in paying its property taxes in Arizona.

13 29. Because Keaton has been delinquent in paying its property taxes in the past, Keaton
14 should also include with its annual report proof of its annual payments to La Paz County for back
15 property taxes, until all back taxes and any associated interest ordered by the Bankruptcy Court is paid
16 in full.

17 30. Keaton's 2007 balance sheet also shows the Company owes \$68,000 in unsecured
18 creditor debts. Keaton's witness testified that the bankruptcy plan provided for a total of \$80,000 to
19 be paid to unsecured creditors and that the company has reduced that amount to \$68,000. The witness
20 also testified that the bankruptcy plan requires the entire amount to be paid off by January 2011.
21 (Tr. at 15) As an additional requirement, we believe Keaton should be required to include with its
22 annual report proof of its payments to unsecured creditors as ordered by Bankruptcy Court, until all
23 payments are paid in full.

24 31. Keaton's current Franchise Agreement with La Paz County (dated May 5, 1999) does
25 not include the proposed extension area. (Tr. at 15) According to Keaton's witness, Keaton has not
26 filed to amend its Franchise Agreement with La Paz County to include the proposed extension area.
27 (Tr. at 19) He further testified that the Company is required to file an amended Franchise Agreement
28 as a condition of the issuance of an Order Preliminary granted in Commission Decision No. 70172

(February 27, 2008) within three years of the effective date of the Decision. (Tr. at 19) Keaton's witness stated that the Company intends to amend its Franchise Agreement to include the proposed extension area in this docket when it files for an amended Franchise Agreement ordered in Decision No 70172. (Tr. at 19) During the hearing, Staff modified and filed as a late-filed exhibit, its recommendation to include a requirement that Keaton file a copy of the amended Franchise Agreement for the proposed extension area in this docket consistent with the timeframe ordered in Decision No. 70172, or by February 27, 2011, as a condition to granting this Order Preliminary.

32. Keaton has a Commission approved Curtailment Tariff.²

33. Keaton's witness testified that there are no proposed golf courses or large turf areas in the requested extension area. (Tr. at 27)

34. The Commission has become increasingly concerned with the need to conserve groundwater in Arizona. Therefore, we believe Keaton should be required to conserve groundwater and that Keaton should be prohibited from selling groundwater for the purpose of irrigating any future golf courses, ornamental lakes, or water features located within the proposed new developments, in the proposed expansion area.

35. Although Keaton is located outside an AMA, it should nonetheless be required to comply with some of the conservation goals and management practices of the ADWR. We will require Keaton to implement, within 90 days of the effective date of this Decision, at least five Best Management Practices ("BMP") (as outlined in ADWR's Modified Non-Per Capita Conservation Program. Only one of these BMP's shall come from the "Public awareness/PR or Education and Training categories of the BMP program.

36. Staff's recommendations as modified herein are reasonable and should be adopted.

CONCLUSIONS OF LAW

1. Keaton is a Arizona public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, and 40-285.

2. The Commission has jurisdiction over Keaton and the subject matter of this

² Decision No. 70172 (February 27, 2008), at pg. 6.

1 application.

2 3. Notice of the application was provided in accordance with the law.

3 4. There is a public need and necessity for water utility service in the proposed extension
4 area described in Exhibit A, attached hereto and incorporated herein by reference.

5 5. Keaton is in compliance with ADEQ and is currently delivering water that meets the
6 standards set forth by the A.A.C.

7 6. Keaton is a fit and proper entity to receive an Order Preliminary to the area described
8 herein.

9 7. It is in the public interest to grant Keaton an Order Preliminary to the area described
10 herein.

11 8. Staff's recommendations, as modified herein, are reasonable and should be adopted.

12 **ORDER**

13 IT IS THEREFORE ORDERED that, pursuant to A.R.S. § 40-282 (D), this Order Preliminary
14 to the issuance of an extension of Keaton Development Company's Certificate of Convenience and
15 Necessity to include the extension area described in Exhibit A, attached hereto and incorporated
16 herein, is hereby granted.

17 IT IS FURTHER ORDERED that, on completion of the requirements contained in Staff's
18 Conditions Nos. 1 and 3, as modified herein, Keaton Development Company shall, within three years
19 of the effective date of this Decision, file a motion in this docket requesting that the Commission issue
20 an Order extending its Certificate of Convenience and Necessity to include the area described in
21 Exhibit A.

22 IT IS FURTHER ORDERED that, within 30 days after Keaton Development Company files its
23 motion, and on Staff's verification that the Company has satisfied conditions described in the above
24 ordering paragraphs, Staff shall prepare and docket for Commission approval, a recommended Order
25 extending Keaton Development Company's Certificate of Convenience and Necessity to include the
26 area described in Exhibit A.

27 IT IS FURTHER ORDERED that Keaton Development Company shall file with Docket
28

1 Control, as a compliance item in this docket, a copy of the Arizona Department of Environmental
2 Quality issued Approval to Construct for Sunland Estates, within three years of the effective date of
3 this Order Preliminary.

4 IT IS FURTHER ORDERED that Keaton Development Company shall file with Docket
5 Control, as a compliance item in this docket, a copy of Arizona Department of Water Resources
6 Analysis of Adequate Water Supply or Physical Availability Determination demonstrating that there is
7 an adequate supply of water to serve the area described in Exhibit A, within three years of the
8 effective date of this Order Preliminary.

9 IT IS FURTHER ORDERED that Keaton Development Company shall file with Docket
10 Control, as a compliance item in this docket, a copy of the amended Franchise Agreement showing
11 inclusion of the extension area described in Exhibit A, on or before February 27, 2011.

12 IT IS FURTHER ORDERED that Keaton Development Company, shall implement, within 90
13 days of the effective date of this Decision, at least five BMPs (as outlined in ADWR's Modified Non-
14 Per Capita Conservation Program) and submit those BMPs to Docket Control. Only one of these
15 BMPs shall come from the "Public awareness/PR or Education and Training categories of the BMP
16 program.

17 IT IS FURTHER ORDERED that if Keaton Development Company fails to timely comply
18 with any one of the above Ordering Paragraphs, the Order Preliminary approved herein shall be null
19 and void, and Staff shall file a memorandum to close this docket.

20 IT IS FURTHER ORDERED that Keaton Development Company shall charge its authorized
21 rates and charges in the extension area, until further Order of the Commission.

22 IT IS FURTHER ORDERED that Keaton Development Company shall annually file as part of
23 its annual report, an affidavit with the Utilities Division attesting that it is current on paying its
24 property taxes in Arizona.

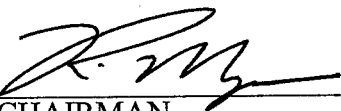
25 IT IS FURTHER ORDERED that Keaton Development Company shall file with Docket
26 Control, as a compliance item in this docket, proof that it is current on its back property tax payments
27 to La Paz County when it files its annual report with the Commission and such filing shall continue
28 until all back taxes and any associated interest ordered by the Bankruptcy Court are paid in full.

1 IT IS FURTHER ORDERED that Keaton Development Company shall file with Docket
 2 Control, as a compliance item in this docket, proof that it is current on payments to unsecured
 3 creditors when it files its annual report with the Commission and such filing shall continue until all
 4 payments ordered by the Bankruptcy Court are paid in full.

5 IT IS FURTHER ORDERED that in light of the need to conserve groundwater in Arizona,
 6 Keaton Development Company, is prohibited from selling groundwater for the purpose of irrigating
 7 any future golf courses, ornamental lakes or water features located within the proposed new
 8 developments and located within the extension area described herein as Exhibit A.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11
 12 

13 CHAIRMAN



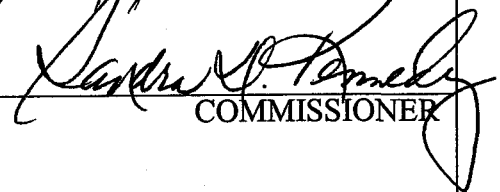
COMMISSIONER

14 

15 COMMISSIONER

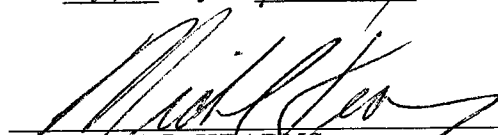


COMMISSIONER



COMMISSIONER

17 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim
 18 Executive Director of the Arizona Corporation Commission,
 19 have hereunto set my hand and caused the official seal of the
 Commission to be affixed at the Capitol, in the City of Phoenix,
 this 6TH day of FEBRUARY, 2009.

20
 21 
 22 MICHAEL P. KEARNS
 INTERIM EXECUTIVE DIRECTOR

23 DISSENT _____

24
 25 DISSENT _____

1 SERVICE LIST FOR: KEATON DEVELOPMENT COMPANY

2 DOCKET NO.: W-02169A-08-0301

3
4 William Scott, President
5 KEATON DEVELOPMENT COMPANY
6 P.O. Box 905
7 Salome, Arizona 85348-0905

8 Richard L. Sallquist
9 SALLQUIST, DRUMMOND & O'CONNOR, P.C.
10 1430 East Missouri Avenue, No. B125
11 Phoenix, Arizona 85014-2478
12 Attorney for Keaton Development Company

13 Janice Alward, Chief Counsel
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18 Ernest G. Johnson, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, Arizona 85007

EXHIBIT "A"

That portion of the NW 1/4 of Section 20, Township 5 North, Range 13 West, Gila and Salt River Meridian, La Paz County, Arizona, being more particularly described as follows:

Lot 3, Lot 4, and Lot 5 as shown on that Results of Survey on file at Record No. 1999-04542, Official Records of La Paz County, Arizona, and being more particularly described as follows:

BEGINNING at a brass cap in concrete marked "Holmquist RLS25074" at the West 1/4 Corner of said Section 20, said brass cap also being the Southwesterly corner of said Lot 5;

Thence $N0^{\circ}04'08''W$ along the West line of said NW 1/4 of said Section 20 (Westerly line of said Lot 5 and Lot 4) a distance of 1178.01 feet to an ADOT brass cap in concrete on the Southerly right-of-way line of U.S. Highway 60-70 (Northwesterly corner of said Lot 4);

Thence $N56^{\circ}24'10''E$ along said right-of-way line (Northerly line of said Lot 5 and Lot 3) a distance of 1277.45 feet to a 1/2" rebar with yellow plastic cap marked "TIERRA RLS31598" (Northerly corner of said Lot 3);

Thence $S33^{\circ}35'50''E$ along the Northeasterly line of said Lot 3 a distance of 632.12 feet to a 1/2" rebar with yellow plastic cap marked "TIERRA RLS31598";

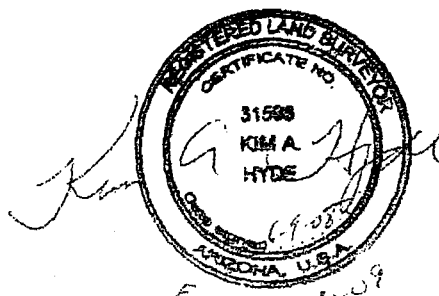
Thence $S89^{\circ}50'04''E$ continuing along the Northeasterly line of said Lot 3 a distance of 1241.65 feet to a 1/2" rebar with yellow plastic cap marked "TIERRA RLS31598" on the East line of said NW 1/4 of Section 20 (Northeasterly corner of said Lot 3);

Thence $S0^{\circ}00'51''E$ along the East line of said NW 1/4 of Section 20 (Easterly line of said Lot 3 and Lot 5) a distance of 1355.75 feet to a 1/2" rebar with yellow plastic cap marked "RLS25074" at the Center 1/4 Corner of said Section 20 (Southeasterly corner of said Lot 5);

Thence $N89^{\circ}58'45''W$ along the South line of said NW 1/4 of Section 20 (Southerly line of said Lot 5) a distance of 2654.40 to the POINT OF BEGINNING.

Containing 89.1 acres, more or less.

Basis of Bearings is $N56^{\circ}24'10''E$ along the Southerly right-of-way line of the Quartzsite-Wickenburg Highway (U.S. 60-70) as shown on the Arizona Highway Department right-of-way plans for Project F-022-1(1), sheet 5 of 46, As-Built, 12-07-61.

**EXHIBIT "A"**DECISION NO. 70745